THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.11379 OF 2006

DATED: 09.08.2007.

Between:

Vytla Bhagyalakshmi .. Petitioner

And

L.I.C. Housing Finance Limited,
(a Central Govt. Undertaking)
rep. by its Authorised Officer,
and another.

.. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.11379 OF 2006

ORDER:

This writ petition is filed seeking a declaration that the action of the first respondent in conducting public auction for sale of the house bearing No.1-279 situated at Ravulapalem, East Godavari District under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act') as arbitrary and illegal.

Though it is not in dispute that the petitioner has availed Housing loan from the first respondent-L.I.C. Housing Finance Limited, it is claimed that he has already paid substantial amounts towards principal and interest. While so, a notice, dated 22.04.2006, was issued in the local dailies by the first respondent inviting sealed tenders for sale of the house in question proposed to be conducted on 16.05.2006 under the provisions of the Securitisation Act. The petitioner got issued a telegraphic notice, dated 15.05.2006, requesting the first respondent to postpone the auction expressing his willingness to pay the entire amount due with interest and costs. In spite of the same, the auction was conducted on 16.05.2006 and the second respondent herein was declared as the successful bidder. Challenging the said auction of the respondents, this writ petition was filed on 07.06.2006 contending *inter alia* that the auction conducted by the respondents was not in accordance with law.

It is also alleged that whereas the property in question was worth about Rs.25,00,000/-, the same was sold in favour of the second respondent for a meager sum of Rs.7,60,000/- and the second respondent failed to pay 75% of bid amount within the prescribed period of 15 days as per the terms and conditions of the auction.

In response to the *Rule nisi* ordered, a counter affidavit has been filed by the first respondent stating that the secured asset was brought to sale by way of public auction following the procedure prescribed under Section 13(2) and 13(4) of the Securitisation Act. It is also stated that the possession of the property was taken pursuant to the order dated 24.03.2006 passed by the District Collector under Section 14 of the Securitisation Act. The upset price of the property was fixed after obtaining the valuation of the property through the panel valuer engaged by the first respondent. The plea of the petitioner that the property is worth Rs.25,00,000/- has been denied.

A separate counter affidavit has been filed by the second respondent stating that he has paid the entire bid amount of Rs.7,50,000/- within the time prescribed and a sale certificate has already been issued in his favour.

Heard the learned counsel for both the parties and perused the material on record.

The material placed before this Court by the second respondent shows that the sale certificate was issued by the first respondent in favour of the second respondent on 16.05.2006 itself. It is also observed that on an application made by the first respondent under Section 14 of the Act, the Collector & District Magistrate, East Godavari District, Kakinada passed an order, dated 29.08.2005, authorizing the Mandal Revenue Officer, Ravulapalem to take possession of the property and handover the same to the authorized Officer of the first respondent. Pursuant thereto, possession of the property in question was handed over to the authorized Officer of the first respondent under a panchanama, dated 24.03.2006.

From the pleadings of the parties as well as the submissions made by the learned counsel, it is clear that the possession of the secured asset was taken by the first respondent long back and the auction was already conducted, in which the property was sold in favour of the second respondent. Even assuming that the sale in favour of the second respondent was illegal on any ground whatsoever, the only remedy open to the petitioner is to move the Debts Recovery Tribunal having jurisdiction by making an appropriate application under Section 17 of the Act, in which event, after considering the rival claims and on appreciation of the evidence that may be produced, the Tribunal will record a finding whether the steps taken by the respondents under the provisions of the Act are in accordance with law or not. Sub-section (3) of Section 17 of the Securitisation Act made it clear that in case the Tribunal comes to a conclusion that the steps taken by the secured creditor are invalid, the possession of the secured assets can be restored to the borrower. All the grounds raised by the petitioner assailing the impugned sale involve various disputed questions of fact, which cannot be enquired into and decided by this Court in a writ proceeding under Article 226 of the Constitution of India.

In the circumstances, granting leave and liberty to the petitioner to work out the statutory remedy, the writ petition is dismissed. Needless to mention that the interim order dated 09.06.2006 shall stand vacated. No costs.

(**G.ROHINI,J**)

Dt:09.08.2007
v v